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Total back in claims firing line over Erika oil spill

FRANCE'S top appeal court has opened up a path to new claims against the Total oil group in ruling that oil spilled from the *Erika* in 1999 can be considered as waste for which Total has responsibility, *writes Andrew Spurrier*.

The court of cassation has overturned a ruling from the appeal court in Rennes, which threw out a claim against the oil group from the small French Atlantic coast seaside resort of Mesquer.

The appeal court refused a claim against Total from the Mesquer council in 2002 for

reimbursement of the cost of removing oil from the *Erika*, which washed up on its coastline.

It argued that the heavy fuel oil carried by the *Erika* was an energy product and could not be considered as waste.

The court of cassation considered, however, that Mesquer's claim needed to be tested under the terms of the European Union waste directive and asked the European Court of Justice to give an opinion.

In June, the court ruled that that oil spilled in the course of an accident could

be considered as waste once it had been mixed with water and sediment.

It added that the shipping company transporting the oil could be considered as the "producer" of the waste but that the vessel's charterer or seller of the oil could also be considered as producers if it was considered that they had contributed to the risk of pollution.

Although this interpretation has now been confirmed by the French court of cassation, Mesquer has not yet won its case for compensation. It will now be for

the court of appeal in Bordeaux to decide whether or not it actually qualifies for compensation or not.

Total claimed after the court of cassation ruling that the case was "neither won nor lost". "It is for the appeal court to verify if Total contributed to the risk of occurrence of pollution," a spokesman said.

Mesquer's legal team hailed the ruling as "historic", however. It said that it had confirmed that the "polluter pays" principle enshrined in waste law was applicable to the case.

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